IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2044 of 1998

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA - Petitioner(s)
Versus
SHREE GOGARA PALA GELLA - Respondent(s)

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Appearance :
MR PJ MALKAN for Petitioner

MR DM THAKKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 21/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The respondent-original applicant was selected and working as ED BPM with the present petitioners since October, 1989. He was involved in the offences punishable under Sections 302, 34, 120B, 147, 148 and 149 of the Indian Penal Code. Police arrested him for the said offence on 19.5.1991. He was charge-sheeted for the offence under Section 302 of the Indian Penal Code and other offences and remained in police custody. On 37th day his services were terminated.

It appears that the original applicant was arrested for the serious offence under Section 302 of Indian Penal Code and hence the petitioners thought it not fit to continue him in service. Therefore, by an order dated 10.7.1991 (Annexure-C) his services were terminated. Aggrieved of this order of termination, the original applicant approached the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “Tribunal”) with a copy of the judgment and order of acquittal dated 2.7.1991 passed by the learned Sessions Judge, Morbi acquitting him for all the charges including the main charge of 302 of Indian Penal Code. Prior to that he had also made a representation to the present petitioners for taking him back into service. Along with the said representation copy of the judgment and order of acquittal passed by the learned Sessions Judge was annexed, but there was no response. Therefore, he approached the Tribunal by way of O.A.

The learned Tribunal after considering the fact that the original applicant was acquitted by the competent criminal court was of the opinion that his case was required to be considered for reinstatement by the employer. Accordingly, Original Application No.104 of 1992 filed by the original applicant was allowed and the present petitioners were directed to review their decision of terminating the applicant's services and to reinstate the original applicant within 8 weeks from the date of the receipt of the order. Regarding back wages, the learned Tribunal left it to the original applicant to make proper application to the authority within one month form the date of the reinstatement and the authority was directed to decide the question of back wages within 3 months from the date of the receipt of such representation. However, the learned Tribunal also made it clear that the break shall count for qualifying service for increments/promotion/pension of the applicant. This impugned judgment and order dated 11.11.1997 passed by the learned Tribunal is challenged in this petition. It is labelled as petition under Article 226 of the Constitution of India, but strictly speaking it is a petition under Article 227 of the Constitution, the scope of which is very narrow and limited. Unless there is jurisdictional error, this court cannot interfere with such orders passed by the learned Tribunal in its limited jurisdiction under Article 227 of the Constitution. There is no error of jurisdiction in this case.

First submission made by learned counsel Mr.Malkan for the petitioners-Union of India in this petition was that the order of acquittal passed by the Sessions Court, Morbi in favour of the present respondent-original applicant was challenged by the State of Gujarat in an Acquittal Appeal, which is pending before this court, therefore, the applicant, who was involved in such serious offence of Section 302 of the Indian Penal Code cannot be reinstated in service. Assuming for the sake of argument that the acquittal appeal filed against the applicant, acquitting him for the offence under Section 302 of the Indian Penal Code by the learned Sessions Judge, Morbi, was pending before this court, then also it is no ground to interfere with the order of the Tribunal unless the order of acquittal passed by the Sessions Court was stayed by this court in acquittal appeal.

Before parting, we must state that half-hearted submission was made by Mr.Malkan that the respondent-original applicant was appointed purely on temporary basis and, therefore, his services were rightly terminated on applicant found to have been involved for the offence u/s.302 of Indian Penal Code. He submitted that once his services were terminated, then merely because he was acquitted by the competent criminal court is no ground for reinstating him in service. It is true that he was appointed on temporary basis, but his services were terminated only on the ground that he was involved in an offence

under Section 302 of the Indian Penal Code. Once, the competent criminal court acquitted the applicant for such charges, then such an order of termination cannot be sustained. It was rightly quashed and set aside by the learned Tribunal.

This brings us to the question of back wages. So far there was interim relief granted by the Division Bench of this court on 18.3.1998. Unfortunately, though the petition was fixed for final disposal in 1999, for a period of almost 7 years the matter could not be heard for some or the other reasons. It is because of the interim relief the original applicant could not make the representation regarding back wages. Now that the writ petition is dismissed, therefore, in terms of the order passed by the learned Tribunal, he will make representation regarding back wages, which shall be decided by the authorities in terms of the order passed by the Tribunal within the prescribed time limit. Rest of the order passed by the learned Tribunal is not interfered.

Accordingly, this petition fails and is dismissed. Rule discharged with costs. Now the petition is dismissed, the petitioners shall comply with the order of the learned Tribunal within a period of 8 weeks from the receipt of this order regarding reinstatement of the respondent-original applicant.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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